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Remarks.

Reconsideration of the application as amended is respectfully requested.

No claim presently stands allowed. Claims 1-4 were previously canceled. Claims 5-6 were previously withdrawn from consideration. Claims 7-11 are pending, with previously presented claim 11 having now been withdrawn from consideration by the Examiner.

Request for Continued Examination

The Examiner has stated that the RCE filed on January 29, 2004, is acceptable.

Election / Restrictions

As aforestated, Applicant acknowledges that claim 11 has been withdrawn from consideration by the Examiner.

Drawings

The Examiner has stated that the drawings must show a "crimp closure portion" as recited in the claims, or such feature must be canceled therefrom.

In response, Applicant has amended claims 7-10 by replacing "crimp closure portion" with -- crimp method seal --, and has amended Figures 4-4a to clearly show the now recited crimp method

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seal. Two drawing sheets comprising the amended figures accompany this document. Applicant respectfully notes that the previously recited "crimp closure portion" in the claims could have been reasonably inferred at 40 in the drawings, with reference to the specification at pages 5-8. Nonetheless, the amendments have been made for clarity as required by the Examiner. Applicant also respectfully asserts that no new matter has been entered relative to the amendments to the drawings, since they are fully supported by the specification as referenced above, to-wit:

at page 5, lines 19-20, "container 10 passes in the assembly line to a sealing station employing a **crimp method for sealing** container 10 at filling end 40" (emphasis added);

at page 7, lines 12-13, "Figures 4 and 4a depict label 200 of Figure 2 as having been **secured by a crimp method** to container 10" (emphasis added); and

at page 7, line 19 through page 8, line 1, "It is to be noted that the **crimp method of attachment** of label 200 to container 10 in Figures 4-4a may be accomplished in a one-step operation as described above, variously referred to as a thermoplastic bonding / crimping technique. Alternatively, the crimp method may take a two-step operation ..." (emphasis added).

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Claim Rejections - 35 U.S.C. §112

The Examiner has rejected claims 7-10 as failing to comply with the written description requirement of §112, i.e., support for a "multiple-use" tube container could not be located in the specification.

In response, Applicant notes that the claims had been previously amended by replacing "tube container" with -- multiple-use tube container -- to overcome the Examiner's previous rejections relative to O'Reilly's single-use sachet reference. Specifically, Applicant's counsel believed that so limiting the claims would render them clearly distinguishable over single-use sachets. In the specification, at page x lines y-z, Applicant discloses that "container 10 includes a product dispensing end 30 and an opposing filling end 40. Dispensing end 30 commonly includes a dispensing cap whereby a product within container 10 may be squeezed out therefrom" (emphasis added). This, counsel believes, along with Figs. 1, 4, and 4a of the drawings, clearly discloses a "multiple-use tube container" and not a single-use sachet. However, to address the Examiner's instant rejection, the claims have now been amended by replacing "multiple-use tube container" with -- capped tube container --.

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The Examiner also rejected claim 7 (and claims 8-10 depending therefrom) in that clarification is required relative to what subject matter the claim is intended to be drawn.

In response, Applicant verifies the Examiner's conclusion that the claims are drawn to the combination of an extended text label and a capped tube container, with amendments having now been made thereto (e.g., -- said extended text label -- rather than "said label") to illuminate such scope.

The Examiner additionally rejected claim 7 (and claims 8-10 depending therefrom) relative to line 2 of that claim, where it was not clear to the Examiner if the recited "tube container" is the same container as the "multiple-use tube container" recited in line 1 thereof.

In response, Applicant has amended the claims to only recite -- capped tube container -- rather than simply "tube container", to eliminate any confusion; and reference to "multiple-use" has been replaced by -- capped -- as aforesaid.

Claim Rejections - 35 U.S.C. §103

The Examiner rejected claim 7 as being unpatentable over a newly cited reference, Garrill et al. (6,119,853).

In response, Applicant respectfully points out that vast structural differences exist between his invention, and the Garrill

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et al. reference. Garrill et al. teach a package or wrapping (col. 7, line 28) which encloses a pressurized container (a metered dose inhaler or "MDI") (col. 4, lines 12-23). The wrapping consists of a heat-sealable flexible packaging material (col. 5, lines 41-54) which is sealed at both ends, after the MDI is placed therewithin (col. 7, lines 33-64; and Fig. 3). Nowhere in Garrill et al. is Applicant's conventionally capped tube container taught or suggested; indeed, the wrapper of Garrill et al. is most nearly associated with O'Reilly's single-use sachet, as distinguished by Applicant in a previous response. Further, and perhaps even more importantly, labeling 55 in Garrill et al. is simply adhesively secured to an outer portion of wrapping 22 (col. 11, lines 24-43) and the drawings of Garrill et al. suggest only that the labeling for the wrapping is provided on a central portion of the wrapping, away from its heat-sealed ends. In contrast, Applicant's extended text label is, by design, secured to the capped tube container only at, and by way of, its opposite crimp method seal.

Therefore, Applicant respectfully requests that the Examiner's rejection in this regard be withdrawn.

Lastly, the Examiner rejected claims 8-10 as being unpatentable over Garrill et al. in view of Hill et al. (5,074,595).

In response, Applicant respectfully points out that Garrill et al. in fact do not "disclose the claimed invention except for the

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label having a pliable attachment tongue ..." as stated by the Examiner. Applicant believes that the foregoing remarks of counsel unequivocally demonstrate the great structural differences between the articles, e.g., Garrill et al. is most closely related to a single-use sachet, whereas Applicant's invention is directed exclusively to a capped tube container which provides more than just one use or one occasion of opening. Further, Applicant respectfully disagrees with the Examiner's characterization of Hill et al. teaching Applicant's pliable attachment tongue. The purported tongue 32 in Hill et al. is actually a resealing tab portion which functions only to open label 10 in conventional booklet fashion (col. 5, lines 40-63).

Yet again, Applicant respectfully asserts that his novel invention as described and claimed is nowhere taught or suggested by the references, either alone or in combination. As cited by counsel in a previous amendment, something in the prior art must suggest the desirability, and thus the obviousness, of making the combination proposed by the Examiner. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044 (C.A.F.C. 1988). In this case, Applicant respectfully asserts that such suggestion of desirability simply does not exist. As also previously cited by counsel, obviousness must be determined in the context of what the prior art fairly teaches; there must be some teaching in the prior art of the proposed combination for an

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obviousness rejection to be proper. For reference structures to be properly combined, and to thereby render a claimed invention obvious, there must be some motivation for the combination. There must be some teaching, suggestion, or incentive to make the combination claimed by the applicant. Northern Telecom, Inc. v. Datapoint Corp., 15 U.S.P.Q.2d 1321 (C.A.F.C. 1990). In this case, Applicant respectfully asserts that no such motivation or incentive exists to combine the references as cited by the Examiner.

Therefore, Applicant respectfully requests that the Examiner's rejection in this regard be withdrawn.

Response to (Previous) Arguments

The Examiner has stated that Applicant's previous arguments are moot in light of the new grounds of rejection.

Applicant respectfully acknowledges this conclusion, but incorporates those arguments by reference thereto in an event that the Examiner may lodge a rejection related thereto, in an action responding to this amendment.

Conclusion

This Amendment is presented in accordance with revised 37 C.F.R. §1.121, effective 7-30-2003.

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Claims 1-4 were previously canceled. Claims 5-6 were previously withdrawn, and Applicant continues to assert a right to present them in a continuing application. Claims 7-10 have now been amended to overcome the stated rejections. Claim 11 has been withdrawn by the Examiner, and Applicant asserts a right to present it in a continuing application.

For the reasons stated above, Applicant believes that his invention disclosed and claimed in the instant application is patentable. Therefore, allowance of claims 7-10 as now amended appears to be in order and such action is accordingly requested.

Also transmitted herewith, in addition to the aforementioned two amended drawing sheets, is a PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) to respond to the Office Action, along with a Credit Card Payment Form for payment of the extension of time fee.

The Applicant and his counsel would appreciate any further inquiry from the Examiner, if deemed necessary after consideration of this Amendment, by way of a telephone conversation with counsel so that a timely Notice of Allowance may be issued.

Respectfully submitted,
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Dated:

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